IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1965

No. 16

SGT. JESSE E. SNAPP,

Petitioner,

versus

HONORABLE W. D. NEAL, State Auditor, and
HONORABLE JOE T. PATTERSON,
Attorney General,
both of the State of Mississippi.

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI

REPLY BRIEF FOR PETITIONER, SGT. JESSE E. SNAPP

The original Brief for Petitioner, Sergeant Jesse E. Snapp, was filed with the Clerk of the Court, United States Supreme Court, on August 23, 1965. On September 22, 1965, the Honorable Joe T. Patterson, Attorney General for the State of Mississippi, filed a Brief for Respondents, W. D. Neal, former State Auditor and Joe T. Patterson, Attorney General. The purpose of this Reply Brief is to clarify issues raised by the Respondents' Brief, referred to above.

A. The Respondents' reference to the "Petitioner's statement concerning non-movement of the trailer on the highways on any date pertinent to this case is not supported by the record; . . . and speculation as to whether it did or did not use the highways" is unwarranted and contrary to the factual evidence. (p. 3, Brief for Respondents)

1. Petitioner's affidavit (R. 14), which was considered by the Court below and accepted by the Respondents as a fair recital of the issues, states under oath that the trailer has "at all times since November 1, 1962 been parked at Sojourner's Trailer Court, 252 Cayuga Street, Crystal Springs, Copiah County, Mississippi" (R. 14).

2. In a supplemental affidavit of the petitioner given under oath on March 13, 1963, the following appears: (R. 25)

> "I purchased my house trailer from Southern Trailer Sales Company, Greenville, Mississippi, on May 16, 1959, for $5330.00. Mississippi State Sales Tax was paid when purchased. The sales agency moved my trailer for me over a Mississippi highway to a point a few miles outside of Greenville, Mississippi.
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> "The trailer remained at that location until October 1961, when I was transferred to Crystal Springs Air Force Station in October 1961. The trailer was transported from Greenville, Mississippi, to Crystal Springs, Mississippi, over Mississippi Highways by Transit Homes, Inc. *It has not been on a Mississippi*

highway since that time." (Emphasis supplied)

3. The operative facts of the case are those which existed at the time the application for refund was made, i.e., February 4, 1963 (R. 16) and hence there is no speculation as to whether it did or did not use the highways, as the record of the proceedings below, which has been admitted by the respondents as being "substantially correct", is crystal clear on this point.

B. In Point IV, respondents seem to take the position that petitioner is estopped, as it were, from now claiming that the vehicle in question is not a motor vehicle within the terms of §574. Respondents base this contention on a sworn statement of petitioner which reads as follows: (See para. IV of petitioner's application for refund, R. 13; and oath thereto, R. 16)

> "The trailer is a 'house trailer' as defined by §2(a) of said House Bill, No. 747, and is not and never has been registered or taxed under authority of Chapter 588, Laws of 1958 of Mississippi."

It is submitted that in no way can this language be construed as a statement that the "trailer" was a motor vehicle. What petitioner said was that it was a house trailer, and that he had not paid any tax under the Motor Vehicle Ad Valorem Property Tax Act, to wit: §10007-02 et seq., Ch. 588, Laws of 1958.

C. Throughout Respondents' brief three cardinal errors are made:

1. Respondents treat the case as though the tax involved was imposed by the Motor Vehicle Ad Valorem Tax Act of 1958. In fact all parts of the record show that the tax was demanded and paid under, and only under, the provisions of the House Trailer Ad Valorem Tax Act of 1962. The error is serious, because the House Trailer Act does not contain an exemption as does the Motor Vehicle Act. (See §10007-21) Respondents concede this fact at p. 17 of their brief.

2. Respondents furthermore contend, for the first time in this litigation, that petitioner could have registered his trailer under §9352-09(b) which is a 1956 amendment.[1] This amendment reads as follows:

> "In cases where a trailer or semi-trailer transporting property is used with and drawn by a private carrier of passengers, there is hereby levied an annual privilege tax upon such trailer or semi-trailer of one dollar ($1.00); provided however that there is hereby levied an annual privilege tax upon each house trailer or house semi-trailer of ten dollars ($10.00)."

But even if petitioner could have registered under §9352-09(b) there is no showing that this would have relieved him of the ad valorem tax imposed under §10007-53 of the House Trailer Act. In fact it can be argued that since §10007-53 provides for a registration

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[1] §9352-09 is included in Chapter 4, entitled "Motor Vehicles" of Title 37, entitled "Privilege and Excise Taxes", Volume 7, Mississippi Code, 1942, Recompiled. §§10007-01 through 27 is Division 15, Motor Vehicle Ad Valorem Tax Act, of Title 39 (Revenue — Ad Valorem). §§10007-53 through 65 is Division 16, House Trailer Ad Valorem Tax Act, of Title 39.

fee of $2.50, whereas §9352-09(b) provides for one of $10.00, that the former, being the later law, impliedly repealed the latter. In any case, the tax involved in *this* case is the ad valorem tax imposed by §10007-53 and not the registration fee imposed by §9352-09(b). Even if petitioner had paid the registration fee imposed by §9352-09(b), he would still have had to pay the ad valorem tax imposed in this case, for there is nothing to show that payment of the tax imposed by §9352-09(b) would relieve him of the ad valorem tax, imposed and exacted under §10007-53.

3. Respondents' position that petitioner's property was a motor vehicle and not a house trailer is in conflict with the official position taken by the taxing authority in this case. Thus, the initial step of the sheriff in demanding payment (R. 16-17) was a demand *specifically* under the House Trailer Act of 1962 and *not* under the Motor Vehicle Act of 1958. The Supreme Court of Mississippi also treated the tax as one under the House Trailer Act. (R. 46). The two acts may be in "pari materia", but they contain some different ideas — the most important of which is the omission in the House Trailer Act of the exemption contained in §10007-21 of the Motor Vehicle Act. In fact, what respondents are saying, is that if petitioner had paid *only* the registration fee under the House Trailer Act of 1962, he would have become exempt from the ad valorem tax of the House Trailer Act of 1962 because of a provision for exemption contained in a cognate, but, in fact, entirely different Act, to wit: §10007-21 of the Motor Vehicle Act of 1958. There is nothing stated to support the proposition that any exemption from the ad valorem taxes imposed by the House Trailer Act of 1962 would thus occur. In fact, §10007-53 of that

Act makes it clear that there can be no registration without prior payment of the ad valorem tax. Petitioner challenges respondents to demonstrate how and why petitioner would have been exempt from the House Trailer Ad Valorem tax imposed by §10007-53 by paying *only* the registration fee of $2.50 under §10007-53 or of $10.00 under §9352-09(b).

Thus, Mississippi itself characterized this proceeding and the tax involved, when it originally made the assessment under the House Trailer Act of 1962 and persisted throughout in treating it as such a tax — and *not* a tax under the Motor Vehicle Act of 1958. Mississippi *did not* assess under the Motor Vehicle Act of 1958, and it is suggested that it did not do so, but chose to assess under the House Trailer Act of 1962, because, if the assessment had been made under the Motor Vehicle Act of 1958, the exemption would have come into operation immediately. (See §10007-21). On the other hand, if it were assessed under the House Trailer Act of 1962, no exemption under state law would be operative.

CONCLUSION

For the reasons stated herein and in petitioner's original brief, it is respectfully submitted that the judgment of the Supreme Court of Mississippi should be reversed.

Respectfully submitted,

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CERTIFICATE

It is hereby certified that service of the foregoing brief has this _____ day of October, 1965, been made on counsel for the Respondents by depositing a copy thereof, postage prepaid, in the United States mails, properly addressed to him as follows:

Honorable Joe T. Patterson
Attorney General of the
State of Mississippi
Jackson 5, Mississippi

Counsel for Petitioner